

# SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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February 1, 2013

**TO:** All Commissioners and Alternates

**FROM:** Lawrence J. Goldzband, Executive Director (415/352-3653 [lgoldzband@bcdc.ca.gov](mailto:lgoldzband@bcdc.ca.gov))

Sharon Louie, Director, Administrative & Technology Services (415/352-3638 [slouie@bcdc.ca.gov](mailto:slouie@bcdc.ca.gov))

**SUBJECT: Draft Minutes of January 17, 2013 Commission Meeting**

1. **Call to Order.** The meeting was called to order by Chair Wasserman at the Metro Center Auditorium, 101 Eighth Street, Oakland, CA, at 1:10 p.m.

2. **Roll Call.** Present were: Chair Wasserman, Vice Chair Halsted, Commissioners Addiego, Chiu, Gibbs, McGrath, Moy, Nelson, Pemberton (represented by Alternate Kato), Pine, Randolph, Sartipi, Sears, Spering (represented by Alternate Vasquez), Techel, Vierra, and Wagenknecht. Assembly representative Feldstein was also present.

Chair Wasserman announced that a quorum was present.

Not present were: Association of Bay Area Governments (Apodaca and Bates), Alameda County (Chan), Santa Clara County (Cortese), Department of Finance (Finn), Contra Costa County (Gioia), Sonoma County (Gorin), Governor's Appointee (Jordan Hallinan), U.S. Army Corps., of Engineers (Hicks), and Marin County (Sears).

3. **Public Comment Period.** Chair Wasserman called for public comment on subjects that were not on the agenda. Comments would be restricted to three minutes per speaker.

Ms. Maureen Gaffney spoke: I am with the Association of Bay Area Governments working on the San Francisco Bay Trail Project. There is a letter in your packets regarding the Department of Fish and Wildlife's, formerly the Department of Fish and Game, public access commitments at Ponds nine and ten at the Napa Plant Site.

Long-range planning has been successfully employed at South Bay Salt Ponds, Hamilton Wetlands, Sears Point and will begin soon at Skaggs Island.

With the Napa/Sonoma Marshes Project partner, Fish and Wildlife and the Coastal Conservancy determined that public access was more appropriate at the Napa Plant Site than the Bay Trail proposed location nearest Highway 37 and we agreed.

The initial proposal for public access at the Napa Plant Site was unsatisfactory. We and a number of other agencies worked with BCDC to address our concerns and to include the Bay Trail around ponds Nine and Ten.



*Making San Francisco Bay Better*

**BCDC MINUTES  
January 17, 2013**

A miscommunication occurred regarding the Trail and Napa County Airport's runway safety area. The Bay Trail dedicated \$70,000 of our limited grant funds to help Fish and Wildlife adhere to their BCDC permit conditions and their commitment to partner agencies and the community by hiring Ducks Unlimited to perform the necessary engineering, environmental and permitting work required to complete the project.

Ducks Unlimited cannot proceed without the cooperation of Fish and Wildlife who is the lead agency for the required CEQA addendum to the EIR.

Fish and Wildlife agreed with this approach more than two years ago when the \$70,000 was awarded to address this issue.

Three months ago Fish and Wildlife informed us that they would prepare the document in house as it was straightforward for them to prepare it internally.

This work has not been completed and the promised runway safety area is reverting to wetlands and Fish and Wildlife continues to stall.

Yesterday I received word that Fish and Wildlife has now determined that an addendum is insufficient and that a supplemental EIR must be prepared.

We were also informed that our current grant funds are insufficient for this task. It is important to note that of 1,460 acres of former salt ponds being restored at the Napa Plant; roughly 3.5 acres were agreed to and required as part of the regional Bay Trail System.

That is 0.023 percent of the total project area. Five years later it is frustrating to be before this body requesting that Fish and Wildlife comply with the last 0.068 percent of that obligation.

Three hundred and thirty miles of the Bay Trail are complete. Partnerships with all the various stakeholders involved are essential to this process.

BCDC's goal of providing public access to the shoreline has been and will continue to be integral to our success.

We ask the Commission to hold the Department of Fish and Wildlife to their obligation. Thank you very much.

Mr. John Woodbury addressed the Commission: I am General Manager for the Napa County Regional Park and Open Space District. Several years ago we advocated for public access along the perimeter of the Napa Plant Site restoration and BCDC required that section of the Bay Trail be put along the interior levees of the project.

Since then we have obtained the funding and constructed about two-thirds of that public access, south of Green Island Road.

North of Green Island Road has been a wholly different matter. This part of the project has been stalled. We would like to work with Fish and Wildlife and other partners to be able to complete the project.

We would ask that this Commission direct its staff to actively engage in monitoring the conditions of approval of the project to ensure that we don't wait another year of no action before the whole permit terminates and expires at the end of 2013.

Mr. Mark Joseph spoke: I am Vice Mayor of the city of American Canyon. I am here representing the City and I believe you've all received copies of the Mayor's letter on this subject.

I want to emphasize that when the Commission established and posed the conditions that we're talking about today, they were reasonable and prudent.

You will hear how important they are to the Napa County Airport and they are very critical to the City of American Canyon.

This area is part of a green belt that we made it a point to establish around our community and the trails and the access areas are critical to relative to recreational opportunities for both our residents and visitors.

We have worked well with the Department of Fish and Wildlife in the past.

We are a little concerned that these conditions haven't been met. We certainly hope the Commission will recognize their importance.

We encourage you to look into the matter and make sure those conditions are met with and the City is here to help with wherever we can.

Mr. Barry Christian presented the following: I was counting on our friends at State Fish and Wildlife to provide leadership on this project. The philosophy we've been presented since 2005 seems to be to lock up these areas and treat the general public as an invasive species.

I think this is a surrender to the lowest standard. Human beings need habitat too. Regional pressures in my community resulted in a rapid loss of open space and a concentration of new housing and warehouses designed to serve the wine industry.

My community needs opportunities to reconnect with natural areas. Our local community is lacking a partner in state government to help us participate.

You are empowered to look at these issues in a balanced manner. You benefit from the perspective of a larger picture.

If Fish and Wildlife had listened to the will of the community at the first public hearing for this project in 2005, public access to Ponds nine and ten would have been incorporated into the initial planning.

The concept of a Napa River Trail connecting the cities of American Canyon and Napa is written into the General Plan of American Canyon since 1996.

There is tremendous support for this trail in American Canyon and there's also support for the rule of law.

This Commission agreed with us when we asked for public access and it was made a condition of the permit.

I am asking this Commission to stand fast and exercise the power you've been granted to issue and enforce these rulings.

Mr. Martin Pehl spoke: I am the Manager of the Napa County Airport. Because of a potential hazard being established so close to our Runway 6, about 300 feet from it, the permit required that an upland be created in one of the ponds adjacent to our runway.

While it was attempted, this hasn't been accomplished and the ground has subsided and we have wetlands created in our safety area.

We would respectfully request that you ensure that the terms of your permit be complied with. Thank you.

Mr. Kelly Smith spoke: I represent SPRAWLDEF. I planned on speaking on Items 10 and 12 which have to do with the Potrero Hills Landfill located in the Suisun Marsh.

Item 10 has been withdrawn and 12 has been postponed presumably because of a notice of appeal. I will take this opportunity to ask you to understand what's really at issue.

In protecting the Marsh there is no Marsh without water. The Marsh Act recognizes the vital role that streams and rivulets play in this process.

The County withdrew two days ago, at the direct bequest of the private operator of this landfill, regulations that would clarify an ambiguity in current regulations that you should consider is being used as a loophole to expand this landfill in a place it never should have been in the first place.

I think this attempt will fail. BCDC and the County should recognize that it will fail because when tested in Court, which we recently did, it was found to fail by an impartial judge sitting on the Bench.

That judge found that Spring Branch Creek, one of the creeks into the Marsh, falls under the protections of the Act and that the expansion would be required to be evaluated under the very strict terms of the Act before it's expanded and he denied that expansion.

Overall you have creek and riparian protections in the Act. Please take a look at these and fix this ambiguity to protect the Act which is your role. Don't wait to do it until the County comes back. Thank you.

Mr. David Tam addressed the Commission: I am a founding director of the Sustainability, Parks, Recycling and Wildlife Legal Defense Fund. As a director I concur with the remarks on our behalf by Kelly Smith, the attorney for SPRAWLDEF.

If the North Bay has difficulty coming to the Commission then the Commission should go to the North Bay.

Mitigations of an unacceptable project are not a justification for the project.

In two years when this issue is before the Commission again, you can grapple with the moral issues better than you did two years ago when you approved the permit that you are now being ordered by the judge to revoke. Thank you.

Mr. James Lee spoke: I am a Redwood City resident and I spoke at the BCDC meeting last month in relation to the Pauls Corporation's intent to develop Pete's Harbor in Redwood City.

I want to thank Commissioner Pine and the BCDC staff for coming out to the site to see how vulnerable the area is to sea level rise.

These concerns are important because sea level rise is going to affect public access at the proposed development.

The first thing affected at this site will be the very public access that the Pauls Corporation has conceded in order to get this plan approved.

USGS's most recent estimate of sea level rise in the Bay area in San Francisco Bay is 1.24 meters by 2100. It's 1.5 meters by 2105.

Flood maps produced by NASA show that the entire east side of Redwood City will be inundated with just one meter of sea level rise.

This flooding could extend as far west as El Camino Real which is a main thoroughfare in the built up Bay side area of the peninsula.

This is a big concern. The Pauls Corporation said that their mitigation for sea level rise would be to increase the site elevation by three feet. Three feet is less than one meter.

I hope that this is something that BCDC will look into. The Bay Trail is very narrow on the north side of the proposed project and there is also some concern about profile of the buildings there, how much shade they're casting on the public access area, on the Trail.

The development next door, the Villas of Bair Island, is less than 10 years old and is already experiencing cracks. This is built on an alluvial fan as is Pete's Harbor.

The State Lands Commission has two separate leases on the outer harbor and the Pauls Corporation is not intending to keep the use of the marina's commercial public access. Representatives from the state have articulated publicly that they would like those leases to remain with public access for commercial marinas.

In the Climate Change Program webpage online, it says, the Bay is rising and this is expected to continue. Today's flood is expected to be the future high tide.

I hope you take this into consideration. Thank you.

Commissioner Wagenknecht commented: I am from Napa County and I appreciated the public coming and reinforcing the issues of the Fish and Wildlife's conditions not being met in this permit that they have.

BCDC has a letter from Commissioner Techel, myself and alternate Caldwell that expresses the issues that we're talking about.

I'm concerned that if we're going to give them another year that we're not going to achieve anything.

I would ask that at one of our meetings in June that we have a progress report on this project.

Commissioner Techel added: I know we have your attention and in this case our local residents are asking that the conditions that this Board put on have been upheld. I support a report in June on where we are on those conditions being moved ahead.

Chair Wasserman commented: I'm quite sure that we will schedule an update on the status of the permit as we would with any permittee in these circumstances.

**4. Approval of Minutes of the December 6, 2012 Meeting.** Chair Wasserman entertained a motion and a second to adopt the minutes of December 6, 2012.

**MOTION:** Commissioner Vasquez moved, seconded by Vice Chair Halsted, to approve the December 6, 2012 Minutes. The motion carried by voice vote with no opposition or abstentions.

**5. Report of the Chair.** Chair Wasserman reported on the following:

a. **Confirmation Hearing.** I am pleased to inform you that the Senate Rules Committee confirmed my appointment as a recommendation to the full Senate. It was voted 5-0 to approve my appointment. There was a letter of opposition from the Sierra Club. I have reached out to them to talk about it. I think the state chapter that submitted the letter is misinformed about some of the positions I took on the Bay Plan Amendment. There were questions asked about some Suisun Marsh issues and about sea level rise issues and what we are doing about it. The Senate wanted to make sure that we are reaching out and open to all points of view. I assured them that we are indeed doing this.

Several items have been removed from today's agenda. Solano County has withdrawn for further consideration, its proposed amendments to the Local Protection Program. That's item 10. As has been noted, the Potrero Hills Landfill has appealed the legal order that was the subject of Item #13. That item has also been removed from the agenda. There will be no public action on that item.

b. **Commissioner Appointments.** Several Commissioners have recently left the Commission, including Valerie Brown, Efren Carrillo and Kelly Fergusson. Our staff has prepared resolutions of appreciation for them. I would appreciate a motion, second and affirmative vote to adopt these resolutions.

**MOTION:** Commissioner Wagenknecht moved, seconded by Commissioner McGrath to adopt the prepared resolutions of appreciation. The motion passed by voice vote with no opposition or abstentions.

The Sonoma County Board of Supervisors has appointed Supervisors Susan Gorin and Shirlee Zane as the new Commissioner and alternate, respectively, to replace Commissioners Brown and Carrillo. I am sure you will join me in welcoming them to future Commission hearings. They are not here.

c. **Building Move.** We are continuing to work with the Department of General Services on our move issue. It is still in active discussion. I would note that it is January 17<sup>th</sup> and our lease expires on March 31<sup>st</sup>. I expect that we will be in our current location in San Francisco for at least some time to come.

d. **Next BCDC Meeting.** After the January 23rd strategic planning workshop, our next regularly scheduled meeting will be held on February 7th. At that meeting, which will be held at the Ferry Building in San Francisco, we expect to take up the following matters:

(1) We may vote on the proposed third phase of restoration for the Napa-Sonoma Marshes, which is the subject of the public hearing that we are holding today.

(2) We expect to have a briefing on issues surrounding the allocation of water in California.

(3) We expect to have a briefing on the Santa Clara County shoreline as well as a briefing on the long term management strategy for dredging. This may be postponed until the 21<sup>st</sup>. We are going to look at scheduling things over the course of this year so that we can better control the flow and rhythm of our meetings. I am sure that we have read about issues around global warming and climate change. Much of what is being written focusses on rising sea level and this keeps it in the public's attention. This is one of the foremost issues we will be grappling with.

e. **Ex-Parte Communications.** In case you have inadvertently forgotten to provide our staff with a report on any written or oral ex-parte communications, now is the time you get to do it.

Commissioner Kato reported: I've spoken with representatives on both sides of the Pete's Harbor issue.

Commissioner Pine stated: I've spoken with advocates for the live-aboards in Pete's Harbor.

Commissioner Chiu replied: I have had ongoing conversations on the Warriors.

Chair Wasserman added: I did receive a letter from Steve Lautze in reference to the landfill issue in the Suisun Marsh.

6. **Report of the Executive Director.** Executive Director Goldzband began by wishing everyone had a joyous and safe holiday seasons and that 2013 brings great happiness and fulfillment. He then reported the following:

We did receive good news yesterday from the California State Senate Rules Committee. I would add one note. In talking with Rules Committee staff I was informed that we expect that the Chairman's nomination will be considered by the full Senate at some point within the next couple of weeks.

Also, one bit of housekeeping. This Wednesday, January 23, we have to perform some planned maintenance on our network servers that will cause intermittent delays in receiving e-mail. However, those e-mails will be queued and delivered as functionality is restored and we expect full restoration by close of business. We'll start the process at around 10:30 a.m. during the Strategic Planning Public Workshop when there will be less e-mail traffic. In addition, of course, our phones will be working and we shall announce this interruption of service on our website, which will be fully functional.

However, as you can imagine, life has not been all skittles and joy at BCDC during the past couple of weeks. No doubt you have read about the January 7th collision between a moving, and thankfully empty tanker named Overseas Reymar and the hopefully immovable Bay Bridge. Fortunately, there were no injuries and the bridge is undamaged. The ship's hull retained its integrity, though damaged. This occurred five years after the Cosco Busan oil spill and reminded everybody who looks at the Bay that this is a working seaport with a number of obstacles and microclimates. At this point, there is no conclusion about the causes of the accident, but it seems that fog played a role. The National Transportation Safety Bureau is working with the Coast Guard and a host of parties to determine the actions and variables that led to the collision. NTSB reports are notoriously painstakingly slow to develop. We shall keep you informed of its progress.

Linda Scourtis of BCDC's staff, who is primarily responsible for oil spill and emergency response, responded immediately to the CalEMA emergency response process as I e-mailed you after the accident. The Harbor Safety Committee is meeting today to review the Critical Maneuvering Areas designated in the Bay in response to the Busan spill to determine how they may need to be changed to ensure safer vessel movement in the Bay. Linda is at that meeting. In addition, Commissioner Jim McGrath represents BCDC on that Committee and I would ask whether he has any comments he'd like to make about the process and next steps.

Commissioner McGrath commented: The Executive Director has already told you that the NTSB will probably take in excess of two months to make a factual determination. The meeting today is a subcommittee of the Harbor Mitigation that deals with critical maneuvering areas. I think there will be some additions to the critical maneuvering areas. It's interesting that those are voluntary restrictions not established by regulation but they have been adhered to pretty completely.

Executive Director Goldzband continued: I also want to mention that we plan for Linda to brief the Commission in early summer on BCDC's emergency response planning and our role in the State's Golden Guardian exercise; you may see her sooner should we have information to provide you about this accident.

We have provided to you today a short memo outlining the Governor's proposed FY2013-14 budget. Essentially, BCDC was held harmless in this budget and received about a 3% increase in general funds to account for an end to the 2012 furlough program, increases in the costs of benefits and deferred pay raises to employees who have "maxed out" at the top step of their pay ranges. If you have any questions we are happy to answer them.

No changes have been made to our paid staff since we last met. However, I am pleased to announce that Monica Scott has joined us as a Bay Design intern. Monica completed U.C. Berkeley Extension's Certificate Program in Landscape Architecture in the spring of 2012 and also works as an intern at the San Francisco Recreation & Park Department's Planning Division. Monica received her undergraduate degree from New York University and made a career change to landscape architecture and urban design.

Also, Adrian Kamada has joined BCDC as a legal intern. Adrian is a third year law student at Golden Gate University School of Law, a member of the law school's Environmental Law and Justice Clinic and Environmental Law Review and has written an article on the international legal implications of climate change. We are very lucky to have such well-qualified people join us.

With regard to administrative activities. I want to let you know of some tremendous progress that BCDC has made. First, you will recall our desire to reduce the amount of mail that we send out to interested parties and, instead, to redirect them to the materials that we post on our website. I am happy to say that, as a result of the postcard that we sent to all of our mail recipients, we are reducing the number of mailed packets and notices from upward of 200 down to about 50. A large number of respondents have shifted to e-mail notification from paper notification and an even larger number never even responded to our request. To ensure that we do not accidentally cut off an interested party from receiving our information, Steve Goldbeck is reviewing our new list and will work with our administrative staff to ensure that our regular stakeholders do receive our information in one way or another.

In addition, you may have noticed that you are receiving an e-mail regularly from Reggie Abad of our staff notifying you that Commission materials have been placed on our website. As all of the materials that we need to mail are available for downloading on the Commission website. I am asking Steve to give you just a couple of minutes on how to do it.

Mr. Steve Goldbeck gave a brief presentation on the process of downloading information from the BCDC website.

Executive Director Goldzband continued: I would ask that, during the next couple of weeks, if you or your staff has not seen an email from Reggie, please let me know.

You may have heard that the House of Representatives approved a significant Sandy Emergency Appropriations bill this week. The Executive Directors of the Coastal Conservancy and the Coastal Commission and I agreed, on the advice of the Conservancy's lobbyist and NOAA representatives and Congressional representatives, not to attempt to place into the bill a direct appropriation for California sea level rise planning and adaptation. Instead, we were advised to work closely with NOAA – which we do already – to apply for the funds that will be made available through the appropriation. I shall keep you informed of our progress.

Now, I have three short items that require your strict attention. First, the dreaded Form 700 is now available electronically. I would urge you to download it and complete your annual submission as soon as possible and send it to BCDC. You will receive from Reggie a hard copy of the form with instructions for its return. Second, please remember that Commissioners and Alternates are required to complete ethics training within six months of their appointment and within every two years thereafter. We shall send you a reminder of that requirement this winter and we shall ask for proof of completion. Finally, there are new FPPC reporting requirements for the new Form 806, which governs the receipt of stipends and meeting honoraria. If you need to complete Form 806, which I believe all elected officials do; please contact Reggie for any information that you may need about your status as a BCDC Commissioner or Alternate.

Finally, three items of good news. First, we should congratulate Commissioner Chiu on his election to Chair of the San Francisco Board of Supervisors.

Second, Sylvia McLaughlin, founder of Save the Bay, has been awarded a Jefferson Award. This is a local award that is part of a national volunteerism awards started in 1972. It is given to individuals who exemplify community and public service. Mrs. McLaughlin may advance to a national honor. Also, KPIX – Channel 5 – is the media sponsor for the awards program and Mrs. McLaughlin was interviewed by KPIX for this award. That interview will air later this month on Channel 5 and on KCBS radio (that's 740 on your AM radio, should you still have one of those). The interview also will be posted on the KPIX website – please keep your eyes open for it.



And, finally, I want to remind you of our Strategic Planning Public Workshop to be held at the offices of Wendell, Rosen in downtown Oakland on January 23. I certainly hope that you will be able to attend. This completes my report.

7. **Consideration of Administrative Matters.** Executive Director Goldzband stated that there were no listings on administrative matters

8. **Public Hearing on the California Department of Fish and Wildlife, Material Amendment No. Three to BCDC Permit No. 2004.008, for Phase III of the Napa-Sonoma Marshes Restoration Project (Enhancing Management Capabilities at Ponds 6, 6A, 7, 7A and 8), in the Napa River and Huichica Units of the Napa Sonoma Marshes Wildlife Area (NSMWA), Napa County.** Chair Wasserman announced that items #8 and #9 both address the third phase of restoration for the Napa-Sonoma Marshes Restoration Project and that they would be taken up together. Item #8 is a material amendment to the permit held by the California Department of Fish and Wildlife (formerly known as Department of Fish and Game). Item #9 is a request for a Consistency Determination by the U.S. Army Corps of Engineers for the project. We will hold a combined public hearing for both items. Michelle Burt Levenson will make the staff presentation.

Both Items 8 and 9 will be further discussed at BCDC's next meeting.

Ms. Levenson presented the following: The next two items on the agenda are public hearings for the same project, the third and final phase of the Napa-Sonoma Marshes Restoration Project proposed just west of the Napa River, in Napa County. The project proponents are the U.S. Army Corps of Engineers who would be responsible for funding and constructing the majority of the improvements and the California Department of Fish and Wildlife, formerly Fish and Game, who owns the land and would be responsible for the long-term maintenance of the ponds.

Due to this arrangement, both actions require Commission review and approval.

The Corps is requesting consistency review, and the Department of Fish and Wildlife is requesting a material amendment to their existing permit for the project.

The project involves improvements to five former salt ponds that would improve the Department of Fish and Wildlife's ability to manage the ponds for wildlife purposes.

In addition, Pond 7 contains bittern. This project proposes to slowly and safely dilute the bittern from Pond 7.

At completion, the project would provide 1,900 hundred acres of managed ponds for wildlife habitat.

The staff has identified seven issues raised by the project in the staff summary.

Of particular importance is whether the project provides maximum feasible public access. consistent with the project.

The proponents have revised the public access component of the project that was originally proposed in their application. Because of this revision the hearing was postponed until today.

The revised proposal removes two segments of public access due to endangered species issues and project feasibility.

This proposal is described in the staff summary before you today.

The staff believes that the remaining public access is extremely important as it provides opportunities to experience a remote region of the Bay.

In particular, the access proposed at Pond 8 is often used by nearby residents of Milton Road and provides unique views of the wildlife area and the Napa River.

Ms. Suzanne M. Von Rosenberg will present the project on behalf of the proponents.

Ms. Rosenberg presented the following: I will give you a brief overview of this project. Representatives of the Army Corps of Engineers and the State Department of Fish and Wildlife are here to answer any questions you might have after I do my presentation.

I will talk briefly about policy considerations and then we'll open it up to questions and discussion.

This project was originally initiated with the purchase of the property in 1994.

The goals of the project are to improve habitat management for wildlife. These ponds will be retained as managed ponds. We will also remove bittern from Pond 7. Bittern is a material that is left over after sodium chloride (salt) is harvested from water (Baywater) leaving a concentrated bittern solution.

The project is a designated wildlife area under Title 14. There are multiple sensitive species present. Most of the area is currently open to public access.

The project is located north of San Pablo Bay on the west side of the Napa River.

We'll be talking about Ponds 6 and 6A which together form an island. And then Ponds 7 and 7A, and Pond 8 will be discussed.

The other two phases, the restoration of Ponds through 5 and the Napa Plant site, are already complete, Ponds 1, 1A and 2 that were restored to managed pond habitat and Ponds 3, 4 and 5 were restored to tidal action.

All these projects were permitted under Permit 8-04. Also under this permit, the Department of Fish and Wildlife completed restoration on the Napa Plant Site in the years 2008, 2009 and 2010.

The project before the Commission today proposes to improve water management capabilities that will allow the Department to create a mix of shallow and deep water managed ponds.

Also, the project would dilute and safely dispose of the bittern in Pond 7.

Another goal of the project is to enable wildlife-compatible public access and to protect the sensitive species that are present on the site.

Overall, the project intends to install 19 water control structures (e.g., culverts with gates). In addition, access walkways are proposed. The majority of the water control structures would be manually operated.

The project would also result in modifications to the doughnut—a small pond, to create a mixing chamber for bittern dilution.

In addition repairs to perimeter and internal embankments are proposed and would facilitate habitat management and provide safer containment of the undiluted bittern.

The proponents are proposing to improve some embankment surfaces for public access, to install interpretive signs and to establish sensitive species protection areas and buffers.

Ponds 6 and 6A total 11 1,146 cres of managed pond habitat and 34 acres of embankments.

The proponents would install nine water control structures at Ponds 6/6A to enable Fish and Wildlife to take water into the project at the end of the summer season and to drain the water out at the end of the winter season. The ponds will be managed for waterfowl during the migration season and for shore birds during the dry season.

The embankment repairs would occur on the interior embankment. Some riprap on the north side of the pond 6A embankment is also proposed.

Public access improvements at Ponds 6/6A are not proposed because these ponds are only accessible by boat.

Pond 7 and 7A are accessible by land via Buchli Station Road. They total 612 acres with 24 acres of embankments. Pond 7 is the bittern pond.

The proponents would dilute the bittern from Pond 7 with water from Pond 7A and Pond 8. A mixing chamber with full water control structures would be installed.

Limited embankment repairs at Ponds 7/7A are also proposed and would ensure that the embankments function properly.

In addition, the interior embankment of Ponds 7/7A would be widened to provide a total of approximately 2.1 acres which is required by the U.S. Fish and Wildlife Service's biological opinion for the project and would provide habitat for endangered species.

Fish screens would also be installed on the intakes from the Napa Slough into Pond 7A.

A visual barrier at the east side of the interior embankment would also be installed to keep people off of the embankment during nesting season.

The eastern embankment along Ponds 7/7A is proposed for access and would be graveled, suitable for wheelchair access.

The endangered species birds that started nesting on the interior embankments did so after some of the original permits were obtained.

Commissioner McGrath inquired: I'm a little confused as to whether the nesting goes on in the embankment or the salt flats within the pond. These pictures look like the nests are actually in the salt flats.

What nesting goes on in the embankment and what nesting goes on in the pond that is going to be managed?

Ms. Rosenberg replied: The birds have nested primarily on the embankment but they've also ventured out onto the salt flats. It depends, in part, on the presence of predators in any given year. There are also the effects of weather. It's unpredictable to predict where the birds will nest from year to year.

Pond 8 would have limited improvements. On the east side of Pond 8 the embankments would be raised. The existing water control structures are adequate and would remain.

There is no Fish and Wildlife property outside of the embankments of Pond 8; there is only informal parking in this area.

On the east side there is an informal footpath.

A summary of the existing public access: (1) the Buchli Station Road parking lot provides access to Pond 7 and 7A and there is handicapped parking; Milton Road provides access to Pond 8 and there is informal parking and a county-owned turn around at the south end of Milton Road; and (3) two boat ramps located in the vicinity and there's a public boat ramp at Cuttings Wharf.

The added public access would be 2.2 miles of improved footpaths and would be surfaced with wheelchair accessible gravel and would have four new interpretive signs. There would be several locations with rustic seating.

Some of the public access considerations for wildlife would be: seasonal closure of the interior embankment between Pond 7 and 7A would be required to protect the nesting birds. The Department needs to give those sensitive species enough of a buffer to ensure that the protection is workable. Our proposal has been that if indications of unauthorized access are seen during the seasonal closure period that additional methods of exclusion may have to be implemented.

Some policy considerations are as follows: fill, the total estimated volume of fill for the entire project is about 46,000 cubic yards, including approximately 2,000 yards of gravel for surfacing and 4,000 yards of riprap for embankment repair.

This is the minimum required to meet our habitat goals.

The entire area is open to boating, hiking and there would be specific improvements to enhance these activities.

The project is entirely consistent with the Salt Pond Policies and Natural Resource Protection mandates in the Bay Plan. Its conversion to habitat is consistent with the Salt Pond Policies.

This is part of a balanced project consisting of tidal marsh and managed pond habitats.

The removal of bittern would eliminate an existing potential threat to water quality and wildlife. Repairing the embankments would ensure that we maintain and provide slightly improved flood protection.

The improved water quality in the managed ponds would improve circulation that would improve habitat for birds.

In terms of climate change, this project is consistent with regional habitat goals. The embankment repairs will improve embankment performance over the longer term.

Staff member Michelle Burt Levenson asked: May I request some clarification from the project proponent? In the staff summary, one of the revisions to the public access proposal deleted the internal access between Pond 7 and 7A. Today, this access was presented as just being closed seasonally.

I would like further clarification as to whether this access would be open seasonally or closed.

Mr. Larry Wyckoff of the California Department of Fish and Wildlife replied: We are proposing to close the entire trail in perpetuity. We don't want people getting used to using the trail for two months out of the year and then going in and trampling the eggs of the endangered species.

We do not have the staff nor the law enforcement to control it and we believe it would be better if everybody got used to not using it at all.

Commissioner McGrath commented: The embankment between Pond 7 and 7A is now available as public access; that's now available as public access, is that correct?

Mr. Wyckoff answered: It is being used at this time during certain times of the year during the non-nesting season. The path is approximately one mile to one mile and a half long.

Commissioner McGrath continued: So there's a closure of a mile of existing public access. There was a portion in the staff report about a budget for new access. I'm not sure that any of it is really new. It appears that it's improvements of existing access and closing of a mile of existing access as well as the problem with previous access. Is that correct?

Ms. Levenson answered: Informal access exists now. What the proponents are proposing to do is formalize the access by applying gravel, providing a consistent width and leveling it.

Commissioner McGrath added: And closing a mile of it.

Ms. Levenson responded: And closing a mile of the informal access that provides nesting habitat for endangered species.

Commissioner McGrath continued: So, I understand that endangered species take particular value in our restoration efforts and there's a difference between a temporary disturbance and disturbing of nesting habitat.

But generally we plan for that in the planning process. I wonder what the master planning document for these 19 hundred acres; I mean, our policies call for planning those facilities so some areas are available for public access and some areas of the most sensitive habitat are well away from public access areas.

I wonder what plans there were in the original proposal for enhancing access for these endangered species.

Mr. Wyckoff replied: Originally, there was no intention of creating habitat through the biological opinion of the U.S. Fish and Wildlife Service. Widening portions of that levee and improving that levee for threatened and endangered species was required as part of the biological opinion. Protecting an endangered species was an afterthought once it was approved by the U.S. Fish and Wildlife Service.

Commissioner McGrath answered: So it wasn't part of the original EIR or the restoration plan approved in 2004 but it's a change that was sought.

Mr. Wyckoff added: I think it was a requirement.

Commissioner McGrath continued: when the plan thinks it's a landscape scale and in that way makes sure that the facilities provide both the public support for habitat restoration which public access entails. So there's actually a closure of a mile and there's a problem with the existing access.

Chair Wasserman asked Commissioner McGrath: When you say that there is a problem with existing access, what are you referring to?

Commissioner McGrath replied: Ponds 9 and 10. And this is an amendment to an existing permit. It's axiomatic that when you accept a permit and begin construction, you've accepted the conditions. So you can't come back and go, well you know, we thought about the conditions and we don't really think they're reasonable now.

The conditions might be, because of endangered species, become unreasonable but then there's a responsibility to provide equivalent public access. I'm not real pleased with the rate of progress on that.

I also see some of the potential problems in the question of adaptive management; how you're planning the whole area.

This is direction to staff for when this comes back, I really want to know what exactly was required in the original permit in terms of public access. What has been done and what hasn't been done.

Because before we want to amend a permit and give it any kind of blessing that whatever is not in compliance is okay, we want to understand what was committed to, what was accepted and whatever problems there were.

And I think that applies to both public access and adaptive management. We've heard that adaptive management is a fundamental element and this is a very complicated hydrologic system.

There were conditions that talked about these processes but we don't have those in front of us. The detailed analysis that is supposed to be done is not yet on the website.

What has been done in terms of monitoring to date involves monitoring of dissolved oxygen. When you open areas you do get into questions of salinity, dissolved oxygen, unequal settling and what I want to understand is what requirements for management of habitat around those were established.

Those are the things that I would need to see to make a fair evaluation of this.

Chair Wasserman stated: I would entertain a motion to close the hearing.

**MOTION:** Commissioner Techel moved, seconded by Commissioner Nelson to close the hearing. Hearing no objections, Chair Wasserman closed the hearing.

Chair Wasserman commented: We will take this matter up again at our next hearing. Both of these items will be discussed for a vote after further staff analysis.

Commissioner Nelson inquired: Could you describe the mechanism by which the bittern disposal is handled? This is contaminated material and needs to be handled carefully.

Mr. Wyckoff responded: It will be disposed of 100 percent through dilution. It's toxic. It's not contaminated. Through mass discharge with adding fresh water and then released.

Ms. Rosenberg added: I just wanted to make clear that it's not contaminated material. It's a material that's out of balance ionically relative to seawater because the sodium chloride has been removed.

There has been biological testing that has determined a safe dilution concentration and that is what we will be following. This is also specified in our regional board permit.

The proposal is for an automated system that will control the volume flows coming into the mixing chamber and control the amount of bittern that can be discharged to the incoming water flows because the incoming water flows are tightly driven.

Chair Wasserman commented: This concludes items 8 and 9. Item 10 has been withdrawn. Item 11 is a briefing on the Strategic Plan.

**9. Public Hearing and Possible Vote on the U.S. Army Corps of Engineers' Consistency Determination No. 2011.002 for Phase III of the Napa-Sonoma Marshes Restoration Project (Enhancing Management Capabilities at Ponds 6, 6A, 7, 7A and 8), in the Napa River and Huichica Units of the Napa Sonoma Marshes Wildlife Area (NSMWA).** This item will be taken up at the Commission's next meeting.

**10. Commission Vote on Solano County's Amendment to the County's Component of the Suisun Marsh Local Protection Program.** Chair Wasserman stated that the County has withdrawn the proposed amendments to its Local Protection Program in order to reconsider them, so this item has been postponed to a later meeting.

**11. Briefing on Strategic Plan Regarding Goals and Objectives Development.** Chair Wasserman announced that Item 11 was to be a briefing by Executive Director Larry Goldzband on the development of the Commission's strategic plan.

Executive Director Goldzband reported the following: I want to make sure that the Commission understands prior to the January 23<sup>rd</sup> public workshop how we have gotten to the point that we are now at with regard to strategic planning.

One of the first charges I was tasked with was to create the process to get a new strategic plan for BCDC. We all agreed that we wanted to make sure that the Commissioners, Alternates and the public become more involved.

And we want to make sure that the plan has publicly stated clear, measurable and overarching goals and objectives.

By doing this we can then align the Commission's directives with our own work plans to achieve measurable results.

What we are trying to do here is to make sure that we get done what we need to get done as well as we can do it and be accountable for doing so.

In October of last year the Commission voted to move forward with the strategic planning process. We hired a marvelous facilitator named Gina Bartlett who has worked over the past several months with Commissioners on the Commissioner working group and staff.

This month we continued to refine the brainstorming that has taken place to date. What you have in front of you is the strategic plan skeleton framework draft revision.

You'll notice that the word, DRAFT, is in the subject line and in the watermark because we want to make sure that everybody recognizes that it is indeed a draft.

We recognized in December as a result of so much meaningful participation from the Commissioners and from staff that we needed to not simply present to the public, much less the Commissioners, a few goals and some objectives.

You would look at this and think, what is all that about? So instead, what we did was to create a framework in which those goals and objectives can actually be discussed.

We have a little over two and a half pages of pros which includes what BCDC's authority is, what the mission is, what the guiding principles are, what our shared assumptions are, what are challenges and opportunities are and then ultimately what the purpose of the plan is.

You should look at this material before you go to page four and see three draft goals and a total of 21 different objectives.

One thing that we have done within this last week at the urging of the Chair is to ensure that that last part of the prose directly connects what BCDC wants to do from a policy perspective directly to those draft goals and objectives.

Please review this prior to the workshop. We encourage Commissioners and their Alternates to attend this workshop. Wendell Rosen is prepared to host a large group of interested parties.

We believe that the public needs to be more involved. Therefore, this truly is a public workshop. We are all going to be in one room together and we will break up into groups and we will all work together to refine and discuss the draft goals and objectives.

There is not a separate place or time for the public to give its comments and then sit back and watch. The public will be giving comments throughout the process in conversation with the Commissioners, Alternates and staff.

If we are directed by counsel that we do need to have some space for public comment then we shall put that in and make sure that it happens.

We want this to be a publicly-oriented conversation so that we can then take that back to the Commissioner working group and the staff to further refine.

Chair Wasserman commented: I echo Larry's comments and strongly encourage Commissioners and Alternates to attend.

This is an evolving and iterative process. This workshop is going to be one of the most thorough discussions of the strategic plan.

We want this to be a strategic plan that has real meaning. We want it to be useful in guiding our decisions and guiding staff actions in explaining ourselves to the public.

Specifics of the strategic plan are a mix of external and internal goals.

The McAteer-Petris Act and other legislation largely guide us and for many of those we don't need a separate strategic plan.

However, there are a lot of things that come before us and staff and you do need some ways of prioritizing in an era of scarce resources.

There are some very important initiatives that are related to our mission under McAteer-Petris but they can be done in a variety of ways. Part of the strategic planning process is to discuss how we do that.

Some examples of that are, what in fact we do about adapting to rising sea level? There is a sense of prioritizing those and prioritizing those compared to other planning efforts that may go on.

One of the things that you ultimately need to discuss is, how much resources do you allocate to rising sea level and how much to the Delta issues?

One of the major goals that is going to be discussed is bringing this agency into the 20<sup>th</sup> or 21<sup>st</sup> Century. Most of our records are still on paper. We have to change that.

We are going to have to make this one of our strong initiatives.

Making our processes for granting permits, planning and our enforcement activities more transparent, accountable and consistent is very important and is an area needing improvement.

Providing more access to and activating existing and new public spaces adjacent to the Bay is also a goal. The question of what does maximum, feasible public access mean needs some further exploration. I think this is going to inform what we may need to be doing on some of the applications that are coming before us this year and in the next several years.

That's why this is a very important exercise for us to go through. Item 11 is now concluded.

Chair Wasserman adjusted the order of the agenda and asked if there was any new business. There was no new business to be discussed.

Chair Wasserman asked if there was any old business to be discussed. There was no old business to be discussed.

**12. Possible Closed Session to Discuss Pending Litigation.** Chair Wasserman advised the Commission would hold a closed session and thanked the public for their participation.

Executive Director Goldzband announced: We will come back after the closed session to report out any action.

Chair Wasserman asked those in attendance to vacate the meeting room and the Commission went into closed session.

Upon returning from closed session Chair Wasserman announced that the Commission voted in closed session to authorize filing an appeal in the case of SPRAWLDEF vs. BCDC.



13. **Possible Consideration and Vote to Vacate Permit No. 3-10(M) for the Expansion of the Potrero Hills Landfill Pursuant to SPRAWLDEF v. SF BCDC.** This item was postponed.

14. **New Business.** No new business was discussed.

15. **Old Business.** No old business was discussed.

16. **Adjournment.** Upon motion by Vice Chair Halsted seconded by Commissioner Nelson, the meeting adjourned at 3:11 p.m.

Respectfully submitted,

LAWRENCE J. GOLDZBAND  
Executive Director

Approved, with no corrections, at the  
San Francisco Bay Conservation and  
Development Commission Meeting  
of February 7, 2013

R. ZACHARY WASSERMAN, Chair